

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED

UNITED STATES OF AMERICA,

v.

ANKUR AGARWAL,

DEFENDANT, pro se

2023 FEB -6 A 11: 59

CRIMINAL NUMBER:

2:19-cr-00770-SDW

MOTION TO REVISE FINE

SCHEDULE OF PAYMENTS

Hon. Judge Susan D. Wigenton:

Ankur Agarwal files a pro se motion to revise the fine schedule of payments. Ankur Agarwal moves pursuant to §3572(d)(3) which provides for relief whenever there is a "material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine." §3572(d)(3) provides for adjustment of the payment schedule.

A. Background

The original Judgment ordered a criminal fine "due immediately" in the amount of \$25,000 (Doc #50; Sept 3, 2020). Subsequently, Mr. Agarwal filed a motion to alter payment over time (Doc #58; Nov 18, 2020). The Court amended the Judgment. The Court granted a schedule of payments consisting of 5 installments of \$5000 annually commencing February 1, 2021 (Doc #59; Nov 19, 2020).

As of January 19, 2020, Mr. Agarwal's total fine payments result to \$11,581.56. Mr. Agarwal's payments come from three sources: BoP inmate financial responsibility program (FRP), US Courts pay.gov system, and court-ordered turnover. BoP FRP payments were made as follows according to the inmate trust fund ledger: Sept 10, 2022 (\$25.00); Jun 10, 2022 (\$25.00); Mar 10, 2022 (\$25.00); Dec 10, 2021 (\$25.00); Sept 10, 2021 (\$25.00); Jun 10, 2021 (\$25.00); and Mar 10, 2021 (\$25.00), for total FRP payments of \$175.00. pay.gov payments were made as follows: Apr 3, 2022 (\$10,000.00). Court-ordered turnover (Doc #70), payments were as follows (withdrawal from Mr. Agarwal's inmate trust fund): Apr 22, 2022 (\$1406.56).

Both of the parties -- Government and Mr. Agarwal -- are familiar with the background and history of payments. Therefore, the instant motion sets forth showing: the change in Mr. Agarwal's economic circumstances; the legal basis for relief; and the relief requested.

B. Change of Economic Circumstances

When the Judgment was ordered on September 3, 2020, Mr. Agarwal had saved money for an

impending appeal (Docket No 20-2890). Since then, the financial burden of the appeal has weighed substantially. He has no income, has depleted savings, and has taken on debt. There are other obligations Mr. Agarwal has on the horizon due to his family being dependent on him. He has to save for child education and care for an elderly Mom. Were he to be released from prison today, he would still be lagging on the obligations. Due to change in economic circumstances, Mr. Agarwal is unable to pay the upcoming February 1, 2023 \$5000.00 payment.

C. Legal Basis

Pursuant to 18 USC 3572(d)(3):

A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full as the interests of justice require.

3rd Circuit courts have uniformly upheld the Court's discretion to revise schedule of payments. See USA v. Thompson, 2015 US Dist Lexis 100684 (3rd Cir 2015) ("And the Court noting that when a Judgment for a fine contemplates payments in installments and a defendant informs the Sentencing Court of a 'material change in a defendant's economic circumstances that might affect the defendant's ability to pay the fine' the Court may, inter alia, adjust the payment schedule, 18 USC §3572(d)(3), and the Court further noting the Judgment in this action provides for payment of the fine in installments ... therefore Thompson is not foreclosed from seeking relief pursuant to §3572(d)(3) with respect to his fine"; USA v. Wynn, 328 F. Appx 826 (3rd Cir 2009) ("... but, where the Judgment permits payments in installments, that statute authorizes a District Court to reschedule a fine payment due a change in economic circumstances."))

D. Relief Requested

Mr. Agarwal remains in the custody of the BoP and is assigned to FCI Ft. Dix. The BoP has calculated his projected release date to be December 16, 2026. It is foreseen Mr. Agarwal will remain incarcerated for many years. He will be unable to make the remaining three payments on the due dates of Feb 1, 2023; Feb 1, 2024; and Feb 1, 2025. Going forward, should his economic circumstances change, Mr. Agarwal will inform the Court. In the meantime, Mr. Agarwal seeks modification of the court-ordered payment schedule pursuant to 18 USC §3572(d)(3).

Here is the proposed modification:

The fine shall be payable in installments pursuant to §3572(d)(1) and (2). Mr. Agarwal shall commence monthly installment payments in an amount equal to 5% of his gross income, payable on the first of each month, upon release from prison.

Mr. Agarwal shall continue to make fine payments from any wages he may earn in prison in accordance with the inmate financial responsibility program.

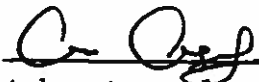
E. Accounting Requested

Mr. Agarwal also moves for the Government to provide him with an accounting of his fine obligation. The Government is requested to verify all payments it has received related to Mr. Agarwal's fine obligations. The Court will also be asked to request the Government to provide Mr. Agarwal with an accounting of the fine currently owed.

F. Conclusion

Based on the foregoing, Mr. Agarwal requests the Court grant the motion to revise fine schedule of payments. The third installment payment is due February 1, 2023. Mr. Agarwal requests the payment of fine not be past due during the Court's ruling on the instant motion.

Respectfully submitted,



Ankur Agarwal

Reg #71563-050

FCI Ft. Dix

PO Box 2000

Joint Base MDL, NJ 08640

Dated: January 20, 2023

Certificate of Service

Court Clerk

United States District Court
District of New Jersey
Martin Luther King, Jr.
Federal Bldg and US Courthouse
50 Walnut Street
Room 4015
Newark, NJ 07102

Certified Mail Number:

7019 0700 0001 1873 3746

US Attorney's Office

Jordan M. Anger, AUSA
970 Broad Street
Suite 700
Newark, NJ 07102

Respectfully submitted,



Ankur Agarwal

Dated: January 23, 2023